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Newsflash: GST Implications for Cross Border E-services - Critical Provisions in a Nutshell

1.0 Introduction and Context

The Goods and Services Tax (GST), which was implemented in India w.e.f. 1st July, 2017 has been the most significant indirect taxation reform in India. GST subsumes various indirect taxes that were in existence in India in the past, such as Value Added Tax, Service Tax and Entertainment tax have been subsumed and from 1st July onwards, a single tax known as GST will be levied on all supply of goods and services. One of the major overhaul in India's indirect tax structure is that E-commerce service providers are being taxed for the very first time in India and this has certain cross-border implications for providers of services over an electronic commerce network, who were selling their products in India as well, even if they do not have any place of business in India. This aspect warrants the attention of all E-services providers and they must ensure the necessary compliances under the Indian GST laws so as to avoid any liability on account of statutory lapses. It is with this intention that RSM India has come out with a newsletter for taxability of GST for e-services provider who do not have a physical presence in India.

2.0 Some important definitions

Some of the definitions relevant to E-services provider are as follows:

- "Electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network.
- "Electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- "Online information and database access or retrieval services" (OIDAR) means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as advertising on the internet; providing cloud services; provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; online supplies of digital content (movies, television shows, music and the like); digital data storage; and online gaming;
- "Non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory

Thus as you can see the gamut of E-services that are covered under the GST law is extremely wide and have cross-border implications as well, especially the OIDAR services.

3.0 Registration

Under the GST law, every person providing OIDAR services and every person who is an electronic commerce operator is required to register under the GST laws in India. **The threshold limit for the registration is NIL** unlike the earlier service tax laws, where there was a threshold limit of Rs. 10 lakhs (approximately USD 15,500). In respect of OIDAR services provided by a person located outside India, but who does not have a fixed place of business in India, he may appoint an agent or a representative and such agent or representative shall be liable to register under the GST law. In case of no such representation, OIDAR service providers may appoint a person to pay taxes on their behalf and such person shall then be required to register under the GST law. There is a simplified registration scheme which was available to OIDAR service providers earlier under the Service Tax law, which is yet to commence under the GST regime. It is imperative that clients must ensure that they migrate their existing Service Tax simplified registration into the GST regime. **Migration is not automatic.**

4.0 Rates and classification

The classification of E-services will be done as per Service Accounting Code (SAC) and the rates shall depend upon the classification. E-services generally fall under the 18% rate slab. There is a four-slab rate structure under Indian GST - 5%, 12%, 18% and 28%. In case of services falling under the 28% slab, there is also an additional compensation cess of 15%.

5.0 Taxes to be levied

For E-service providers and OIDAR services, where the location of the service provider is outside India and services are to be provided to a registered person in India, the liability to pay GST is on the registered service recipient situated in India. This is known as the mechanism of reverse charge and the E-service/ OIDAR service provider does not have any liability in respect of GST in relation to such transactions. If, however, the service receiver is not registered i.e. he does not have a valid GST identification number, then the liability is on the OIDAR service provider to pay taxes under the GST law. In respect of such transactions, a single tax known as integrated Goods and Services Tax will need to be paid to the tax authorities in India. Such payment can be done through an intermediary or through a payment representative in case the services provider does not have a fixed place of business in India.

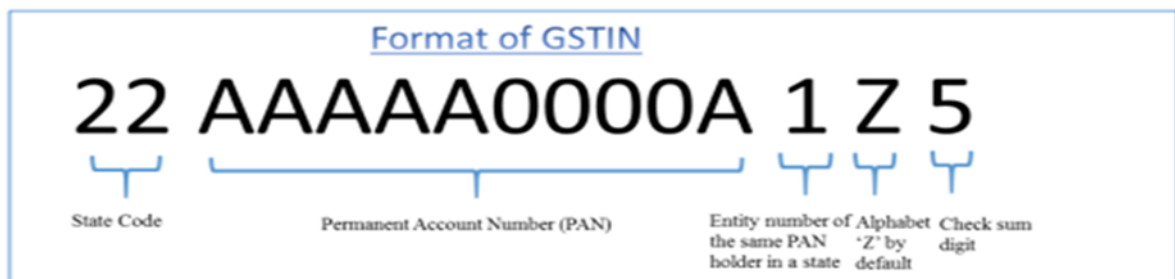
6.0 B2B vs B2C

Under Indian GST laws, it does not matter if the transaction is a B2B one or a B2C one. What matters is whether the service recipient in India is registered or not registered under the GST law. We have discussed the taxability in the previous paragraph.

7.0 How to determine whether a person is registered or not?

At the time of booking sales on the website, the E-services provider or OIDAR services provider, will need to ask for details of the customer such as Name, Address, Country of residence, GST Identification Number etc. The GST identification number or GSTIN is a 15 digit alphanumeric code, with the first two digits being the state code (There are 29 states in India which has a federal structure of government) and thereafter the next ten digits being a PAN (Permanent Account Number). It is possible to check the GSTIN on the Indian governmental website. Possibly some validation mechanism or requesting registered customers to upload a proof of the GSTIN may be undertaken. Where a person does not disclose a GSTIN then it would be presumed that such a person is unregistered under Indian GST laws and the OIDAR service provider will be required to pay taxes either suo moto or through a representative, an intermediary or payment agent.

The registration number in India, known as the GSTIN follows the following protocols:



8.0 Cases where there is a liability on intermediary

In case where an Intermediary is involved for providing the OIDAR services, liability to discharge GST and to do compliances with the GST regulations in respect of return filing , payment of tax would be on such intermediary except in respect of the following transactions:

- Invoice, bill or receipt identifies the provider and GST registration number of service provider and description of service.
- Intermediary / electronic platform shall not collect process or is responsible for payment between service recipient and service provider.
- Intermediary / electronic platform shall not authorize any delivery.
- Intermediary / electronic platform shall not decide on the terms and conditions for provision of service.

9.0 Compliances and Invoicing

- Service provider shall be required to record data limited to what is required to satisfy that GST for each transaction done online has been charged with the appropriate taxes.
- OIDAR Service providers will have to obtain the information of customers such as address of customer, name, etc. in case of services to unregistered persons
- OIDAR service providers will have to file return in form GSTR-5A monthly by 20th of the month succeeding the month for which return is filed as well as an annual return, amounting to 13 returns per annum.
- E-service providers other than OIDAR will be required to file 3 returns per month and an annual return amounting to a total of 37 returns per annum.

10.0 The Way Forward

It is imperative for businesses to understand the implications of GST on the sales effected through E-commerce in India and they must ensure that they have clear and precise answers to the following questions:

- Am I liable to register under the GST laws of India for the services I provide?
- If I am already registered, have I migrated my existing registration to the GST regime?
- Do I need to make any changes in the billing pattern and the data I gather from the website at the time of making sales to my customers?
- What is the rate and classification code applicable to my services?
- Do I need to make any changes to my business because of the fact that I had not accounted for the GST implications?

After getting necessary answers to the questions, one may still find that things are hazy. RSM would be pleased to assist you, if required, in conducting a GST Transition Study as well as facilitate you in ensuring compliances under the GST law. For any further assistance you may reach out to gsthelppdesk@rsmindia.in.

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The above note is a general guidance note and may require the recipient to do an independent revalidation in the context of his business model and specific circumstances. Also, we have given only a summary of the laws and exact provisions of the Indian GST law may need to be referred to. The views expressed in this email are of the sender and do not necessarily reflect RSM India's views on the matter. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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